

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Joint petition for approval to acquire assets, request for expedited approval, and request for waiver of carrier selection requirements of Rule 25-4.118, F.A.C., to allow transfer of a portion of the customer base of Total Call International, Inc. to OPEX Communications, Inc.

DOCKET NO. 090528-TI
ORDER NO. PSC-10-0164-PAA-TI
ISSUED: March 22, 2010

The following Commissioners participated in the disposition of this matter:

NANCY ARGENZIANO, Chairman
LISA POLAK EDGAR
NATHAN A. SKOP
DAVID E. KLEMENT
BEN A. "STEVE" STEVENS III

NOTICE OF PROPOSED AGENCY ACTION ORDER TO APPROVE JOINT PETITION
FOR WAIVER OF THE CARRIER SELECTION REQUIREMENTS OF RULE 25-4.118,
FLORIDA ADMINISTRATIVE CODE (F.A.C.)

BY THE COMMISSION:

NOTICE is hereby given by the Florida Public Service Commission that the action discussed herein is preliminary in nature and will become final unless a person whose interests are substantially affected files a petition for a formal proceeding, pursuant to Rule 25-22.029, Florida Administrative Code.

I. Case Background

On December 4, 2009, Total Call International, Inc. (TCI) and OPEX Communications, Inc. (OPEX), both intrastate interexchange companies (IXC), submitted a request for a waiver of the carrier selection requirements of Rule 25-4.118, Florida Administrative Code (F.A.C.), for the transfer of all presubscribed long distance customers from TCI to OPEX. At the conclusion of the transaction, TCI will retain its IXC registration.

OPEX is acquiring approximately 200 business customers and 3,778 residential customers currently served by TCI. OPEX seeks the waiver so it will not have to obtain each customer's authorization. With the waiver, OPEX can protect itself from possible complaints of

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unauthorized carrier changes. Customers will benefit because they will not be subject to a loss of service during the transfer.

We are vested with jurisdiction in this matter pursuant to Sections 364.02(14)(g) and 364.603, Florida Statutes (F.S.).

II. Analysis

Pursuant to Rule 25-4.118(1), F.A.C., a customer's carrier cannot be changed without the customer's authorization. Rule 25-4.118(2), F.A.C., provides in pertinent part that a carrier shall submit a change request only if one of the following has occurred:

- (a) The provider has a letter of agency (LOA) from the customer requesting the change;
- (b) The provider has received a customer-initiated call for service;
- (c) A firm that is independent and unaffiliated with the provider has verified the customer's requested change.

Pursuant to Rule 25-24.475(3), F.A.C., Rule 25-4.118, F.A.C., is incorporated into Chapter 25-24, and applies to IXCs.

Rule 25-24.455(2), F.A.C., provides that an IXC may petition for a waiver of any provision of the rules governing IXCs. The Commission can grant in whole, grant in part, or deny the petition for waiver based on the following:

- The extent to which competitive forces may serve the same function as, or obviate the necessity for, the provision sought to be waived;
- Alternative regulatory requirements for the company which may serve the purposes of this part; and
- The extent to which a waiver would serve the public interest.

OPEX has attested that it will provide for a seamless transition while ensuring that the affected customers understand available choices with the least amount of disruption to the customers. We have reviewed the notices that will be sent to TCI's customers and found them to be adequate. The customers should not experience any interruption of service, rate increase, or switching fees.

In addition, neither OPEX nor TCI has any outstanding complaints and after the transaction is consummated, TCI will continue to work with our staff to resolve any customer complaints that arise from issues occurring prior to the transfer.

Further, neither OPEX nor TCI has any outstanding regulatory assessment fees, penalties or interest associated with its respective IXC registration.

III. Conclusion

We find that in this instance it is appropriate to waive the carrier selection requirements of Rule 25-4.118, F.A.C. If prior authorization is required in this event, customers may fail to respond to a request for authorization, neglect to select another carrier, and lose their long distance services. Furthermore, we find that granting this waiver will avoid unnecessary slamming complaints during this transition.

Additionally, this waiver shall only apply to the specific set of customers identified in the petition. The petitioners shall provide us notification of the actual date when the transaction is consummated. If for any reason the transaction is not consummated, the waiver shall be null and void.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that we approve Total Call International, Inc.'s and OPEX Communications, Inc.'s request for waiver of the carrier selection requirements of Rule 25-4.118, F.A.C. It is further

ORDERED that the waiver shall only apply to the specific set of customers identified in the petition. It is further

ORDERED that the petitioners shall be required to provide this Commission notification of the actual date when the transaction is consummated and if for any reason the transaction is not consummated, any waiver approved by this Commission shall be null and void. It is further

ORDERED that if no person whose substantial interests are affected by the proposed agency action files a protest within 21 days of the issuance of the order, this docket should be closed upon the issuance of a consummating order.

By ORDER of the Florida Public Service Commission this 22nd day of March, 2010.



ANN COLE
Commission Clerk

(S E A L)

TJB

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing that is available under Section 120.57, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

The action proposed herein is preliminary in nature. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, in the form provided by Rule 28-106.201, Florida Administrative Code. This petition must be received by the Office of Commission Clerk, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on April 12, 2010.

In the absence of such a petition, this order shall become final and effective upon the issuance of a Consummating Order.

Any objection or protest filed in this/these docket(s) before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.